

PROFFERS
FAIRFAX PLAZA LLC
RZ 2013-PR-006

December 11, 2013

Pursuant to Section 15.2-2303(a) of the Code of Virginia, 1950, as amended, the property Owner and Applicant in this Rezoning proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Map as Tax Map Reference No. 48-3 ((1)) 0031 (hereinafter referred to as the "Property") will be in accordance with the following conditions if, and only if, said rezoning request for the C-8 and H-C Districts for a portion of the Property is granted by the Board of Supervisors of Fairfax County, Virginia (the "Board"). In the event said application request is denied or the Board's approval is overturned by a court of competent jurisdiction, these proffers shall be null and void. The Owner and the Applicant (the "Applicant"), for themselves, their successors and assigns, agree that these proffers shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board, in accordance with applicable County and State statutory procedures. The Property shall not include any portion of the Property that is within Fairfax City, Virginia, and thus these proffers shall not be applicable to the portion of the Property within the City of Fairfax.

GENERAL

1. Substantial Conformance. Subject to the proffers and the provisions of Article 18 of the Zoning Ordinance, under which minor modifications to an approved development plan are permitted, development of the Property shall be in substantial conformance with the Generalized Development Plan entitled "Fairfax City Plaza" ("GDP"), prepared by Professional Design Group, Inc., and dated January 2012, as revised through October 9, 2013.

2. Minor Modifications. In addition to that described above, pursuant to Paragraph 4 of Section 18-204 of the Zoning Ordinance, minor modifications to the GDP and these proffers may be permitted as determined by the Zoning Administrator.

3. Maximum Intensity. The Applicant reserves the right to construct a lesser amount of Gross Floor Area ("GFA") shown on the GDP provided that the buildings and Property remain in substantial conformance with that shown on the GDP as determined by the Zoning Administrator.

4. Architecture.

A. The final architectural design shall be in substantial conformance with the general type, quality and proportion of materials depicted in the elevations, and sections shown on the GDP. The materials on the building façade shall be brick, stone and/or stucco as shown on the architectural drawings.

B. Rooftop Equipment. Rooftop mechanical equipment will be shielded from view using parapet walls and designed not to exceed roof coverage limitations of the Zoning Ordinance including the 25% limitation. Other screening measures may be used such as including the facilities as part of the architecture of the buildings, utilizing compatible colors, or employing telecommunication screening material and flush mounted antennas.

5. Unifying Elements. All street furniture, if any, including garbage cans, benches and lamp posts, shall be consistent, both in terms of materials and design, throughout the development.

6. Signage.

A. All signage shall comply with Article 12 of the Zoning Ordinance. Pole signs shall not be permitted on the Property. All directional and way finding signage shall be consistent, both in terms of materials and design, throughout the development.

B. Accent lighting. All building accent lighting shall be in substantial conformance with the outdoor Lighting Standards of Par. 2 of Sect. 14-902 of the Zoning Ordinance that provides for full cut-off or directionally shielded lighting fixtures that are aimed and controlled so that the directed light shall be substantially confined to the object intended to be illuminated.

7. Green Building Practices.

A. Specific Credits. The Applicant will include, as part of the site plan submission and building plan submission, a list of specific credits within the most current version of the U. S. Green Building Council's Leadership in Energy and Environmental Design – Core and Shell rating system (LEED®-CS) rating system, or other LEED rating system determined to be applicable to the building(s) by the U. S. Green Building Council (USGBC), that the Applicant anticipates attaining. A LEED-accredited professional (LEED-AP) who is also a professional engineer or licensed architect will provide certification statements at both the time of the site plan review and the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED certification of the project.

B. Team Member. In addition, prior to site plan approval, the Applicant will designate the Chief of the Environment and Development Review Branch of the Department of Planning and Zoning (“DPZ”) as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all

documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.

C. Green Building Escrow. As an alternative to the actions outlined in the above paragraphs, or if the Applicant fails to attain LEED precertification prior to building plan approval, the Applicant will post, for the building, a “green building escrow,” in the form of cash or a letter of credit from a financial institution acceptable to the Department of Public Works and Environmental Services (“DPWES”) as defined in the Public Facilities Manual, in the amount of (\$2/sq.ft.). This escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of certification, by the U. S. Green Building Council, under the most current version of the LEED-CS rating system or other LEED rating system determined, by the U. S. Green Building Council, to be applicable to the building. The provision to the Environmental and Development Review Branch of DPZ of documentation from the U. S. Green Building Council that the building has attained LEED certification will be sufficient to satisfy this commitment.

D. Escrow Release. If the Applicant provides to the Environment and Development Branch of DPZ, within one year of issuance of the final Non-Residential Use Permit (“Non-RUP”) for the building, documentation demonstrating that LEED certification for the building has not been attained but that the building has been determined by the U. S. Green Building Council to fall within three points of attainment of LEED certification, 50% of the escrow will be released to the Applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the county budget supporting implementation of county environmental initiatives.

E. Escrow Forfeit. If the Applicant fails to provide, within one year of issuance of the final Non-RUP for the building, documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification or demonstrating that the building has fallen short of LEED certification by three points or less, the entirety of the escrow for the building will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives.

F. Extension of Escrow Period. If the Applicant provides documentation from the USGBC demonstrating, to the satisfaction of the Environment and Development Review Branch of DPZ, that USGBC completion of the review of the LEED certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, the time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made to the Applicant or to the County during the extension.

8. Stormwater Management

A. Stormwater Management ("SWM") Facilities. Subject to review and approval by the Department of Public Works and Environmental Services (DPWES), stormwater management and Best Management Practices (BMP) measures for the Property shall be provided through the use of an underground stormwater detention facility and filteras, as shown on the GDP. Other innovative BMP measures such as, but not limited to biofiltration swales or rain gardens may be substituted as determined by the Applicant and approved by DPWES. Any innovative BMP measures shall be maintained by the Applicant, in accordance with the procedures as determined by DPWES.

9. Landscaping

A. Landscaping and Landscaped Open Space. The site plan submitted for the development shall include a landscape plan consistent with that on Sheet 4 of the GDP, including the two (2) "feature" trees planted immediately in front of the building. The Applicant shall maintain the proposed landscaping as shown on the GDP and any diseased or dead trees shall be replanted at the next spring or fall planting season. All new deciduous trees provided as shown on such landscape plan, shall be a minimum of 2 to 2.5 inches in caliper at the time of planting. All new evergreen trees used in peripheral screening and landscaping areas and public spaces shall be a minimum of six feet (6') in height at the time of planting. Such landscape plan shall be provided in substantial conformance with the landscaping concepts shown on the GDP as determined and approved by the Urban Forest Management Division ("UFMD").

B. Feature Tree Planting Area. A minimum soil volume of 700 cubic feet and a minimum rooting area of 8 feet wide shall be provided for the "Feature Tree(s)". If the minimum planting width of 8 feet cannot be provided at the surface, the Applicant shall use structural cell technology, or other measures acceptable to UFMD, below paved surfaces to satisfy the 8 feet minimum planting area requirement and soil volume requirement of 700 cubic feet. The Applicant shall provide UFMD written confirmation from a certified arborist demonstrating and verifying the installation of structural cells, or other measures, in such locations. In addition, prior to the first installation of structural cells, or other measures, the Applicant shall notify UFMD at least 72 hours in advance of the first installation of structural cells, or other measure, to afford Urban Forest Management representatives an opportunity to inspect the installation. "Feature Tree Planting Area" details shall be provided as part of the site plan.

10. Location of Utilities. Along all existing and proposed public rights-of-way, utility lines shall be generally located so as not to interfere with the landscaping concepts shown on the GDP. The Applicant reserves the right to make minor modifications to relocate such landscaping to reasonably accommodate utilities lines and Virginia Department of Transportation (VDOT) sight distances provided such relocated landscaping shall retain a generally equivalent number of plantings and continues to reflect the concepts illustrated on the GDP and shall conform to the tree canopy calculations specified in the Fairfax County Public Facilities Manual (PFM). Any tree or shrub determined to impact utilities lines and sight distance shall be replaced with an appropriate size or relocated elsewhere on the site with equal size and quality, as determined by UFMD. For all other areas of the Property, in the event that, during the process of site plan review any landscaping shown on the GDP cannot be installed in order to locate utility lines, as determined by DPWES, then an area of additional landscaping consistent of equivalent flora generally consistent with that displaced shall be substituted at an alternate location on the Property, subject to approval by UFMD.

11. Tree Preservation

A. Tree Preservation Plan. The Applicant shall submit a Tree Preservation and Narrative as part of the first and all subsequent site plan submissions. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the Urban Forest Management Division, DPWES.

The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees to be preserved, as well as all on and off-site trees, living or dead with trunks 12 inches in diameter and greater (measured at 4 1/2 feet from the base of the trunk or as otherwise

allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) located within 25 feet of either side of the limits of clearing and grading. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the GDP and those additional areas in which trees can be preserved as a result of final engineering. The tree preservation plan and narrative shall include all items specified in PFM 12-0507 and 12-0509. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

B. Tree Appraisal. The Applicant shall retain a professional arborist with experience in plant appraisal, to determine the replacement value of all trees 12 inches in diameter or greater that are shown to be saved on the Tree Preservation Plan. These trees and their value shall be identified on the Tree Preservation Plan at the time of the first submission of the respective site plan(s). The replacement value shall take into consideration the age, size and condition of these trees and shall be determined by the so-called "Trunk Formula Method" contained in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture, subject to review and approval by UFMD.

At the time of the respective site plan approvals, the Applicant shall post a cash bond or a letter of credit payable to the County of Fairfax to ensure preservation and/or replacement of the trees for which a tree value has been determined in accordance with the paragraph above (the "Bonded Trees") that die or are dying due to unauthorized construction activities. The letter of credit or cash deposit shall be equal to 50% of the replacement value of the Bonded Trees. At any time prior to final bond release for the improvements on the Property constructed adjacent

to the respective tree save areas, should any Bonded Trees die, be removed, or are determined to be dying by UFMD due to unauthorized construction activities, the Applicant shall replace such trees at its expense. The replacement trees shall be of equivalent size, species and/or canopy cover as approved by UFMD. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any Bonded Tree that is dead or dying or improperly removed due to unauthorized construction activity. This payment shall be determined based on the Trunk Formula Method and paid to a fund established by the County for furtherance of tree preservation objectives. Upon release of the bond for the improvements on the Property constructed adjacent to the respective tree save areas, any amount remaining in the tree bonds required by this proffer shall be returned/released to the Applicant.

C. Tree Preservation Walk-Through. The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist, and shall have the limits of clearing and grading, if any, marked with a continuous line of flagging prior to the walk-through meeting. During the tree preservation walk-through meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFMD, DPWES, representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little

disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.

D. Limits of Clearing and Grading. The Applicant shall conform strictly to the limits of clearing and grading, if any, as shown on the GDP, subject to allowances specified in these proffered conditions and for the installation of utilities and/or trails as determined necessary by the Director of DPWES, as described herein. If it is determined necessary to install utilities and/or trails in areas protected by the limits of clearing and grading as shown on the GDP, they shall be located in the least disruptive manner necessary as determined by the UFMD, DPWES. A replanting plan shall be developed and implemented, subject to approval by the UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.

E. Tree Preservation Fencing. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" proffer below.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing

vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by the UFMD, DPWES.

F. Root Pruning. The Applicant shall root prune, as needed to comply with the tree preservation requirements of these proffers. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a certified arborist.
- An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

G. Site Monitoring. During any clearing or tree/vegetation/structure removal on the Applicant Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by the UFMD. The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist to monitor all construction and demolition work and tree preservation efforts in order to ensure

conformance with all tree preservation development conditions, and UFMD approvals. The monitoring schedule shall be described and detained in the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.

MISCELLANEOUS PROFFERS

12. Trash. All outdoor trash receptacles shall conform to the standards set forth in the Public Facilities Manual for the screening of such receptacles. The Applicant shall: (a) provide trash cans in the general vicinity of any outdoor seating and patio area; (b) provide for the removal of trash bi-weekly from this area, if any; and (c) generally clean and clear any outdoor seating and patio area of trash daily. The Applicant shall arrange for site clean-up to occur, no earlier than 7 a.m. and no later than 9 p.m.

13. Food Odor. The Applicant shall not allow the discharge of air contaminants/objectionable odors generated by the restaurants, if any, or their solid waste. For any restaurant located on the Property, the Applicant shall employ, but not be limited to, the following control measures:

A. All putrescible material as defined by the Fairfax County Code Section 109-1-1-2, shall be stored in sealed containers and shall be disposed in a container(s) reserved exclusively for use by the restaurant(s). Such putrescible material shall not be shredded or unsealed.

B. All putrescible materials shall be removed from the subject property by a commercial refuse hauler as needed, Monday through Saturday. These standards shall be in addition to any other performance standards, regulations, ordinances, or restrictions promulgated by the County.

14. Parking Enforcement.

A. The Applicant shall prohibit parking of vehicles by people not visiting the shopping center and shall provide signage to alert the public. The Applicant shall maintain a contract with a towing service and have parked vehicles which are in violation towed from the Property at the violator's expense.

B. Signs. Signs stating: "No oversized vehicles allowed beyond this point" or headache bar shall be posted at the locations shown on the GDP subject to revision by DPWES and the Fire Marshall.

15. Pedestrian Connection. To serve the residents of Parcel 28, Tax Map 48-3 ((1)) 28 ("Parcel 28"), the Applicant shall create a pedestrian easement at the time of site plan approval and install a pedestrian connection to Parcel 28 to allow pedestrians to travel between the Property and Parcel 28 at the request of Fairfax County or at such time that the property owner of Parcel 28 grants an access easement. The Pathway shall be lit and may traverse across the driveway to the sidewalk on the East side of the building. The location of the easement, lighting and Pedestrian Connection shall be generally as shown on the GDP and as approved by UFMD.

16. Inter-parcel Access Easement. The Applicant, prior to the issuance of the first Non-Rup, shall dedicate to the County an inter-parcel access easement for the benefit of Tax Map 48-1 ((1)) 32, as shown on the GDP. Until such time as the inter-parcel connection is installed the area encompassed by the Easement shall be striped for no parking.

17. Archeological Study. At least thirty (30) days prior to any land disturbing activities on the Property, the Applicant shall conduct a Phase I archaeological study on the Property and provide the results of such study to the Cultural Resources Management and

Protection Section of the Fairfax County Park Authority (CRMP) for review and approval. If CRMP has not responded in writing within thirty (30) days of submission, the Phase I archaeological study shall be deemed approved. The study shall be conducted by a qualified archaeological professional. No land disturbance activities shall be conducted until this study is submitted to CRMP.

18. By-Right Uses.

I. The following by-right uses in the C-8 district shall not be established on the Property:

- A. Automobile-oriented uses.
- B. Bowling alleys.
- C. Churches, chapels, temples, synagogues and other such places of worship.
- D. Colleges, universities.
- E. Commercial swimming pools, tennis courts and similar courts, indoor.
- F. Drive-in financial institutions.
- G. Drive-through pharmacy.
- H. Funeral homes.
- I. Hotel, motel
- J. Miniature golf courses, indoor.
- K. Mobile and land based telecommunication facilities, subject to the provisions of Sect. 2-514.
- L. Indoor archery ranges, fencing and other similar indoor recreational uses.
- M. New vehicle storage.
- N. Parking, commercial off-street, as a principal use.

O. Quasi-public athletic fields and related facilities.

P. Retail sales establishments-large.

Q. Skating facilities, indoor.

R. Wholesale trade establishments.

S. Theatres.

T. Vehicle light service establishments.

U. Vehicle transportation service establishments.

II. Should the Applicant file a Special Exception to authorize a Special Exception

Use on the Property, a Proffer Condition Amendment shall also be filed and simultaneously processed for a concurrent decision by the Board of Supervisors.

19. Bicycle Parking. The Applicant shall provide bicycle racks as shown on the GDP. The bike racks shall be inverted U-style racks or other design approved by the Fairfax County Department of Transportation ("FCDOT"). The total number of bike parking/storage spaces shall be consistent with the Fairfax County Policy and Guidelines for Bicycle Parking as determined at site plan.

20. Outdoor Construction. Outdoor construction on the Property of the improvements shown on the GDP shall take place only during the hours from 7:00 a.m. to 9:00 p.m. Monday through Friday and from 8:00 a.m. to 6:00 p.m. on Saturday. There will be no outdoor construction on New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas Day. The permitted hours of construction shall be posted on-site in both English and Spanish.

21. Trash Removal and Deliveries. Trash removal and deliveries at the Property shall only take place between 7:00 a.m. to 10:00 a.m. and 4:00 p.m. and 6:00 p.m. Monday through

Friday and from 8:00 a.m. and 6:00 p.m. on Saturday. This requirement shall be inserted in any contracts and leases.

22. Native, Non-Invasive Plant Materials. Only native, non-invasive plant materials shall be used for landscaping the site, subject to approval by the Urban Forest Management Division.

23. Fencing. The materials to be used in the rear screening barrier shall be brick piers with board on board fencing as shown in the GDP. The fencing along the boundary adjacent to Arthur Treachers and the Laundromat shall be wrought iron or a similar "see-through" material as shown in the GDP with installation of such fencing prior to the issuance of the first Non-RUP.

24. Screening Wall. Any screening wall installed to screen any dumpsters placed on the Property shall be constructed of cinder block brick or architectural block.

25. Traffic Arrows. Arrows indicating the direction of travel shall be installed prior to the issuance of the first Non-RUP and maintained on the one-way portion of the drive isle.

26. Successors and Assigns. These proffers shall bind and inure to the benefit of the Applicant and its successors and assigns. Each reference to "Applicant" in these proffers shall include and be binding upon the Applicant's successor(s) in interest and/or developer(s) of any portion of the Property.

27. Counterparts. These proffers may be executed in one or more counterparts, each of which when so executed shall be deemed an original document and all when taken together shall constitute but one and the same instrument.

[SIGNATURE TO APPEAR ON THE FOLLOWING PAGE]

Applicant:

Fairfax Plaza LLC

By: 

Name: Mehdi Sarbaz

Title: Managing Member